

REMARKS

I. Summary of the Office Action

Claims 43-86 are pending in this application. Claims 54-55, 57-63, 65-66 and 68-74 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5, 13-15 and 17-20 of U.S. Patent No. 6,665,869. Claims 76-86 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 43-86 were rejected under 35 U.S.C. § 102(e) as being anticipated by LaJoie et al. U.S. Publication No. 2005/0015804 ("LaJoie").

II. Summary of Applicants' Reply

Applicants have amended claims 76-86 to more particularly define the claimed invention. Applicants claim amendments do not introduce any new matter and are fully supported by applicants' originally filed specification. Applicants are submitting herewith a Terminal Disclaimer to obviate the obviousness-type double patenting rejection. Applicants respectfully traverse the Examiner's rejections.

III. Reply to the Obviousness-Type Double Patenting Rejection

Claims 54-55, 57-63, 65-66 and 68-74 were rejected on the ground of nonstatutory obviousness-type double

patenting as being unpatentable over claims 1, 5, 13-15 and 17-20 of U.S. Patent No. 6,665,869.

Applicants submit herewith a Terminal Disclaimer under 37 C.F.R. § 1.321. Applicants submit that the Terminal Disclaimer obviates any obviousness-type double patenting rejection over commonly-owned U.S. Patent No. 6,665,869. Applicants respectfully request, therefore, that the double patenting rejections be withdrawn.

IV. Reply to the § 101 Rejection

Applicants have amended claims 76-86 to more particularly define the claimed invention. As amended, claims 76-86 recite computer readable media encoded with a computer program recorded thereon. Applicants respectfully submit that, as amended, claims 76-86 are directed to statutory subject matter.

Accordingly, applicants respectfully submit that claims 76-86 comply with 35 U.S.C. § 101, and request that the Examiner's rejection be withdrawn.

V. Interview Summary

Applicant wishes to thank the Examiner for the courtesy of holding a telephonic interview with applicant's representative on May 19, 2008. While no agreement was reached, applicant believes the interview advanced the prosecution of the case.

During the interview, the pending § 102 rejection over LaJoie was discussed. Applicant pointed out that the present claims include the elements that advanced prosecution to allowance in the patent application, where the U.S. counterpart of Lajoie was also used in the rejection. Applicant also pointed out that other than an initial erroneous § 102 rejection (which was argued over), it was the consistent position of the Examiner in the parent application, supervised by (then) supervisory examiner Faile, that LaJoie was not an anticipatory reference. Lajoie was repeatedly viewed as not disclosing the claimed program guide application interface (see, e.g., ¶ 3 of 6/20/02 rejection and ¶ 5 11/5/02 rejection in the parent case).

Applicant's representative and the Examiner also discussed the meaning of "program guide application interface" and as a result, Applicant believes that the Examiner now

agrees that a user interface is not the claimed program guide application interface. The claimed program guide interface allows non-guide applications to use program guide resources, or to use device resources, via direct requests made by the nonguide applications. Again, this is not disclosed in Lajoie.

Applicant's representative and the Examiner also discussed the Examiner's citation of the VCR programming disclosed in Lajoie. Applicant will reiterate below why this disclosure is not the claimed approach.

VI. Reply to the § 102 Rejection

As an initial matter, Lajoie does not disclosed a "program guide application interface." Applicant reiterates its argument made in the parent application. The assumption that Lajoie shows a particular structure is not sufficient to establish a prima facie case of anticipation pursuant to the requirement of 35 U.S.C. § 102(e). "Even if the prior art device performs all the functions recited in the claim, the prior art cannot anticipate the claim if there is any structural difference." MPEP § 2114 (citing to In re Ruskin, 146 USPQ 211(CCPA 1965)). Moreover, the Examiner's assumption that an application interface must exist is inappropriate

because each software application in Lajoie may have its own resources without having the need to interface with other software applications.

Turning to the Examiner's reliance on the VCR timer function, the present independent claims all recite (a) the program guide application interface; (b) the non guide application; and (c) device and program guide resources. The claims further recite that the program guide application interface receives requests directly from the nonguide applications, and directs the request to a resource. Applicant respectfully submits that there is no way the Examiner can logically read the current claims on LaJoie's VCR timer. The VCR timer does not issue a request to Lajoie's guide (assuming that is what the Examiner realies on to show a program guide application interface) to access the VCR - it controls the VCR directly. It is simply not the claimed architecture.

VII. Conclusion

In view of the foregoing, this application is in condition for allowance. Reconsideration and allowance of this application are respectfully requested.

Respectfully submitted,

/Paul E. Leblond/

Paul E. Leblond
Registration No. 58,397
Agent for Applicants
Ropes & Gray, LLP
Customer No. 75563
1211 Avenue of the Americas
New York, New York 10036
Tel.: (212) 596-9000
Fax: (212) 596-9090